

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT SOUTH CAROLINA
3 CHARLESTON DIVISION

4 DEPOSITION OF H. FRED KUHN, JR.
5 30(b)(6) MOSS & KUHN, P.A.

6 NAUTILUS INSURANCE COMPANY,

7
8 Plaintiff,

9
10 vs.

CASE NO. 2:22-cv-1307-RMG

11 RICHARD ALEXANDER MURDAUGH, SR.; CORY FLEMING;
12 MOSS & KUHN, P.A.; CHAD WESTENDORF; and PALMETTO
13 STATE BANK,

14 Defendants.
15

16 DEPONENT: H. FRED KUHN, JR.

17 DATE: JULY 21, 2023

18 TIME: 10:01 A.M.

19 LOCATION: PENDARVIS LAW OFFICES, PC
20 BEAUFORT, SC
21

22
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25

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1 H. FRED KUHN, JR.,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. RANNIK:

6 Q. Good morning, Mr. Kuhn. I hold you in
7 very high esteem from the work we've done
8 together and I've always enjoyed working with
9 you. I don't think this deposition is going to
10 take very long and I appreciate you being here
11 this morning.

12 All the basic standard questions. Have
13 you had your deposition taken before?

14 A. Not that I can recall.

15 Q. Okay. You know all the rules, but I'm
16 required to, of course, say that if you don't
17 understand any of my incomprehensible questions,
18 because there will be some, please let me know
19 and I'll rephrase. And if you give an answer,
20 I'm going to assume that you've understood my
21 question if that's fair enough.

22 A. That's fair.

23 Q. All right. Of course if you need a
24 break, let me know. I don't think it's going to
25 get that long.

1 What have you done to prepare for
2 today's deposition?

3 A. I was sent by email a package of
4 documents, looked like they're records from my
5 firm. They were Bates-labeled Moss & Kuhn pages
6 X through Y, I looked -- looked through those.

7 Q. Okay. About 300 pages; does that sound
8 right?

9 A. That sounds right.

10 Q. Okay. Did you speak to anybody other
11 than your counsel?

12 A. No.

13 Q. Okay. Now, of course you're testifying
14 today on behalf of Moss & Kuhn. I'm just going
15 to show you what I'd like to mark as Exhibit 1,
16 which is the notice of deposition.

17 MR. RANNIK: If you can just mark
18 that.

19 (Plf. Exhibit No. 1 marked for
20 identification.)

21 Q. And I'll ask you just to flip to the
22 Exhibit A and the topics there. And just confirm
23 for me that you're able to testify to the best of
24 the organization's knowledge as to these topics
25 today?

1 A. Yes.

2 Q. Okay. All right. Where are you from,
3 Mr. Kuhn?

4 A. Beaufort.

5 Q. Okay. And where'd you go to school?

6 A. Beaufort.

7 Q. All right. Where'd you go to law
8 school?

9 A. USC.

10 Q. Okay. And when did you graduate?

11 A. 1980.

12 Q. Okay. And where did you work after you
13 graduated?

14 A. The predecessor of the law firm I'm at
15 now. It was called Moss, Carter, Branton &
16 Bailey.

17 Q. Okay. All right. Well, let's talk
18 about that a little bit. So it's now Moss &
19 Kuhn, previously it was Moss, Kuhn & Fleming.
20 When did it change from Moss, Kuhn & Fleming to
21 Moss & Kuhn?

22 A. I do not recall. It was many years ago.

23 Q. Okay. Okay. It was many years from
24 Moss, Kuhn & Fleming to Moss & Kuhn?

25 A. Oh.

1 Q. Sorry, I --

2 A. No.

3 Q. -- know I kind of jumped ahead there.

4 A. I'm sorry. From Moss, Kuhn & Fleming to
5 Moss & Kuhn, shortly after Mr. Fleming was
6 temporarily suspended --

7 Q. Okay.

8 A. -- which would have been sometime
9 around -- gracious, whenever that was.

10 Q. 2021, 2022?

11 A. Yeah, October 2021.

12 Q. Okay. When the firm changed its name,
13 did it reorganize or was it just a name change
14 for the same entity?

15 A. Just a name change.

16 Q. Okay. Tell me --

17 MR. RANNIK: We have a little bit
18 of an echo.

19 MR. PENDARVIS: I'm fixing that.

20 A. Well, a little bit of reorganization.
21 Cory was no longer a member of the firm.

22 Q. Of course. Of course.

23 A. So a little bit of reorganization, but
24 basically a name change.

25 Q. But it wasn't like a new entity was

1 filed with the --

2 A. No.

3 Q. -- Secretary of State?

4 A. No.

5 Q. Okay.

6 MR. PENDARVIS: Just a second.

7 Go ahead.

8 MR. RANNIK: All right. I think
9 maybe your mic is still on.

10 MR. PENDARVIS: I'm trying. This
11 is new.

12 MR. RANNIK: Got it? All right. I
13 think we're good.

14 Q. Tell me a little bit about the firm's
15 governing documents. Do you have a partnership
16 agreement? An operating agreement?

17 A. We have an old operating agreement.

18 Q. Okay. Approximately how old?

19 A. 30 years.

20 Q. Okay. Fair enough. And ever been
21 amended?

22 A. Not that I know of.

23 Q. Okay. Let's talk a little bit about the
24 partnership structure. In its current form --
25 well, let's say -- no, not in its current form.

1 In the form it existed in 2018-2019 when Cory
2 Fleming was still a shareholder, how were profits
3 and expenses shared between the members or --
4 members or shareholders, however you called it?

5 A. The expenses were shared equally. The
6 firm paid them.

7 Q. Okay.

8 A. Profits was on an ad hoc basis. If we
9 were all equally responsible for the profit, we'd
10 divide it equally. If one of us was more
11 responsible for the profit, it would be a
12 disproportionate division.

13 Q. Okay. Sort of the -- would there be --
14 so a disproportionate division. Would there
15 still be a split of all -- if there's a profit in
16 any case, would there be a split of that profit
17 among the partners or was it sort of eat what you
18 kill and if you worked on it you're going to get
19 a piece?

20 A. I don't recall any division or anybody's
21 excluded.

22 Q. Okay. Okay. Was there a managing
23 partner?

24 A. No.

25 Q. Okay.

1 A. No. No. We all -- everything was
2 unanimous usually.

3 Q. Okay. And were there any other partners
4 other than the three of yourselves?

5 A. No.

6 Q. Okay. Any other lawyers other than the
7 three of yourselves?

8 A. There was. Kimberly Smith was there
9 while it was Moss, Kuhn & Fleming.

10 Q. She was an associate?

11 A. An associate. And I think that was the
12 only one who was -- while it was Moss, Kuhn &
13 Fleming.

14 Q. Okay.

15 A. There was Mike -- Michael Matthews, but
16 I think that was before Cory. Thomas O'Quinn, I
17 think that was before Cory. Andrew Safran, I
18 think that was before Cory. I'm trying to think
19 of who all has been there as an associate.

20 Yeah, I think Kimberly Smith would be
21 the only one who was there when Cory was also
22 there.

23 Q. Okay. In 2018-2019, what were the
24 relative ownership percentages of the firm?

25 A. One third, one third, one third.

1 Q. Okay. When did Mr. Fleming join the
2 firm?

3 A. I do not recall.

4 Q. Okay. Was he in law school around the
5 same time as you?

6 A. No.

7 Q. Okay.

8 A. No.

9 Q. A fair amount younger?

10 A. Yes.

11 Q. Okay.

12 A. I think about 10 years younger, 15 years
13 younger maybe.

14 Q. Okay. Do you recall when he became a
15 partner?

16 A. I do not.

17 Q. Okay.

18 A. He was with the solicitor's office and
19 came over, so I don't remember when that was.

20 Q. Okay. Do you remember if he joined as a
21 partner or did he come as an associate?

22 A. I do not recall, but he became partner
23 pretty quickly.

24 Q. Okay.

25 A. If he was an associate, it wasn't for

1 very long.

2 Q. Okay. So in terms of the partners, you
3 know, authorizations and rights and things like
4 that within the firm, am I right that in 2018 and
5 2019 Mr. Fleming was authorized to accept a
6 representation or was it something that he would
7 have to clear with the other partners first?

8 A. No, totally up to him.

9 Q. Okay. And so he could set the terms of
10 the representation?

11 A. Yes.

12 Q. He could send -- handle the case and
13 send demand letters on firm letterhead and
14 prepare settlement documents, all of those sorts
15 of things?

16 A. Yes.

17 Q. Okay. How about depositing funds into
18 the escrow account, was he authorized to do that
19 or was that something that needed to be brought
20 to the partners?

21 A. No. He'd do that on his own.

22 Q. Okay. And disbursements --

23 A. Each of us --

24 Q. -- were the same?

25 A. Correct.

1 Q. Okay. In terms of staffing cases
2 involving paralegals, is that something that
3 would have to come to the partnership or he was
4 authorized to put in staff as needed in the case?

5 A. I'm not sure I understand. He had a
6 paralegal who worked for him.

7 Q. That was --

8 A. We each had dedicated paralegals.

9 Q. That was exactly my question. Okay.

10 A. Okay. Yeah. We each had dedicated
11 paralegals who worked --

12 Q. Okay.

13 A. -- he had a paralegal for him, I have a
14 paralegal for me, Jim has a paralegal for him.

15 Q. Okay. Did you ever work with each
16 other's paralegals at all or was it really
17 totally segregated?

18 A. Very -- very rarely unless there's a
19 project that we needed help on --

20 Q. Okay.

21 A. -- but -- but typically not.

22 Q. Okay. All right. Did you guys
23 collaborate regularly on cases or were you sort
24 of working in your silos and -- how did that work
25 when a new matter came in, would you -- here's

1 one of my incomprehensible questions. See, I
2 told you there would be one.

3 Well, just tell me about a case comes
4 into the firm, how would you guys handle it?
5 Would it be something that was the subject of
6 discussion or was it someone would just report
7 and say, hey, I got this case and that was --

8 A. Not even that. If someone asked me to
9 represent them and I agreed, I would do it and
10 Jim and Cory might never know about it.

11 Q. Okay.

12 A. And same way, we're all -- we handled
13 our own cases.

14 Q. Okay. All right.

15 A. And we didn't have to have each other's
16 approval for a case, if that's what you're
17 getting at.

18 Q. Yeah.

19 A. We just decide on our own do we want to
20 take this case, if so we take it.

21 Q. Okay. All right.

22 A. And particularly Cory. Cory's in a
23 different building from Jim and I, he's not even
24 in the same building so we might never ever even
25 see his clients.

1 Q. Okay. Where was his office?

2 A. We have two -- two buildings on the same
3 lot.

4 Q. Got it. Okay.

5 A. We have two separate -- there's an old
6 house and then before I joined the firm they
7 built another house behind that house to hold
8 more lawyers. This is when it was Moss, Branton,
9 Bailey, Dore, Jesse -- there were a lot more
10 folks.

11 Q. Got it.

12 A. Yeah.

13 Q. Got it. Okay.

14 A. So Cory is in the back building, Jim and
15 I are in the front building.

16 Q. And so you guys wouldn't be responsible
17 for supervising, you know, his staff because --

18 A. No.

19 Q. -- there's --

20 A. I'm sorry.

21 Q. -- and supervising him and his matters
22 because you're equal partners and --

23 A. Correct.

24 Q. Okay. All right. I believe that Alex
25 Murdaugh was an attorney with Moss & Kuhn in one

1 of its iterations at some point; is that correct?

2 A. Yes.

3 Q. Do you recall when?

4 A. I do not. It would have been just right
5 after he got out of law school --

6 Q. Okay.

7 A. -- whenever that was. It was quite a
8 while ago.

9 Q. Okay. He was an associate?

10 A. Yes.

11 Q. Okay. And, then, do you remember about
12 how long he stayed with the firm?

13 A. It was not long. A year, maybe two.

14 Q. Okay. Did you work with him when he was
15 with the firm?

16 A. Nope. Jim mostly supervised him.

17 Q. Okay. All right.

18 A. I mean, if he had a question or
19 something, but -- but he -- he -- he mainly
20 worked with Jim on Jim's cases.

21 Q. Okay.

22 A. So Jim would take in a case, ask Alex to
23 help him on it, and that's sort of how it works
24 since he was brand new.

25 Q. Got it.

1 A. They -- they worked together.

2 Q. Okay. Do you recall why he left the
3 firm?

4 A. He wanted to go back home.

5 Q. Okay.

6 A. Reason he gave me.

7 Q. Yeah.

8 A. He missed Hampton.

9 Q. All right.

10 A. Believe it or not, Beaufort's too big of
11 a city for him. That's -- seriously, I think he
12 wanted to work with his dad, his grandfather, his
13 brother --

14 Q. Uh-huh.

15 A. -- and -- and go back home.

16 Q. Yep. Join the family firm.

17 A. And he was -- you know, he was -- he had
18 just gotten married, was -- hadn't had any kids
19 yet but I'm sure that was in the future and he
20 wanted to raise them in the country around his
21 family, not -- not here.

22 Q. Okay. Has the firm continued to work
23 with Alec Murdaugh over the years, as in
24 referring cases back and forth, serving as
25 cocounsel?

1 A. Based on what I know now, Cory did.

2 Q. And -- well, tell me a little bit about
3 that. How often? What do you know?

4 A. What I know now, it happened maybe eight
5 times over the last 23 years.

6 Q. Okay. And what detail can you give me
7 about those times?

8 A. None off the top of my head.

9 Q. Fair enough.

10 A. Other than Satterfield. Yeah.

11 Q. All right.

12 A. But I did look to see what checks had
13 been written to Alec Murdaugh ever from the firm
14 and there were, if I remember right, like eight
15 or nine times a check had been written to Alec
16 Murdaugh. So I'm assuming those are cases that
17 Cory would have worked with him on those cases
18 over the last -- I think the last of -- the
19 oldest one was like 2001.

20 Q. Okay. Okay.

21 A. I've never worked with Alec on any case.
22 Jim tells me he's never worked with Alec on any
23 case.

24 Q. Okay.

25 A. But apparently Cory had.

1 Q. All right.

2 A. Which I did not know of until all -- all
3 this hit the fan.

4 Q. Okay.

5 A. There'd be no reason for me to know.

6 Q. Did Alec ever refer cases to Moss & Kuhn
7 other than -- are you aware of any cases he
8 referred to Moss & Kuhn other than perhaps the
9 ones he worked as cocounsel with Cory on?

10 A. Not that -- no.

11 Q. Okay. Are you aware of Moss & Kuhn
12 having referred any cases to his firm?

13 A. No. Except, like I say, digging through
14 the records to see what the relationship might
15 have been, I see there are about eight or nine
16 checks over the last years that were written from
17 our firm to Murdaugh.

18 Q. Okay. Okay.

19 A. And I assume those are cases they worked
20 on together.

21 Q. Okay. Aside from those checks that
22 you've uncovered and reviewed, any other sources
23 of information about the cases that Fleming and
24 Mr. Murdaugh would have worked on together?

25 A. The Satterfield case. I mean, again,

1 after all this hit the fan --

2 Q. Right.

3 A. -- I, of course, looked into that.

4 Q. Okay. Are there any other records the
5 firm has that would show the extent to which
6 Mr. Fleming and Mr. Murdaugh worked together on
7 cases in the past?

8 A. No. I looked.

9 Q. Okay.

10 A. Not just me, but the Office of
11 Disciplinary Counsel, Attorney General's Office,
12 State Grand Jury, they've all looked.

13 Q. Have you come across anything involving
14 the Pinckney case and Mr. Fleming's involvement?

15 A. I think that is one of the checks that
16 was written to Mr. Murdaugh in about 2017.

17 Q. Okay.

18 A. I remember the amount's like, don't
19 quote me, 4 grand or something like that.

20 Q. Okay.

21 MR. HOOD: 4,516.

22 A. There you go.

23 Q. All right. I think there may also have
24 been a check written to PMPED from that trust
25 fund as well, from that, you know, trust account

1 as well. Anyway, I'll have to go back and
2 refresh my memory on that.

3 But my memory is that there was \$350,000
4 held in trust for a Medicaid lien. The Medicaid
5 lien ended up being a fair amount less and then
6 some of the money went to Mr. Murdaugh, some of
7 it went to PMPED, and it didn't go back to the
8 Pinckneys.

9 But does that ring any bells? Does
10 that --

11 A. No.

12 Q. Fair enough. Fair enough. So I think I
13 already know the answer to this question, but who
14 from the firm was involved in any way with the
15 Satterfield representation?

16 A. From what I've discovered, just Cory.

17 Q. Okay. And his paralegal?

18 A. Well, yeah.

19 Q. Any other administrative staff or --

20 A. No.

21 Q. Okay. Was there -- was it a case that
22 was ever discussed between the partners at any
23 time?

24 A. No. Never -- never heard of the word
25 Satterfield until it all hit the fan.

1 Q. Okay. Let me talk to you about some of
2 the firm admin. Who does the firm's bookkeeping?

3 A. A lady named Lynn Davidson.

4 Q. Okay. That name is familiar to me and I
5 don't know why. Is she local?

6 A. Yes.

7 Q. Okay. Is she a CPA?

8 A. No. No.

9 Q. Just an accountant?

10 A. She's been a bookkeeper for -- her
11 mother was our bookkeeper before she was.

12 Q. Okay. Does she reconcile the firm's
13 operating and trust accounts?

14 A. Yes.

15 Q. Okay. Is there lawyer involvement in
16 reconciling the trust account?

17 A. I guess, yes. She does the work, we
18 look it over.

19 Q. Sure.

20 A. Yeah.

21 Q. Sure. That's how we do it in my firm as
22 well. And who looks it over?

23 A. We all can look it over. I usually look
24 it over about once a month if -- that's the goal
25 at least.

1 Q. Okay.

2 A. Yeah.

3 Q. All right. The firm's bank statements
4 and things like that, I guess they go to her, she
5 puts things into -- do you guys use QuickBooks?

6 A. Yeah.

7 Q. She puts it into QuickBooks and
8 reconciles it and you sort of get that printout
9 that -- it's like a trust reconciliation printout
10 that shows in and out and that it lines up?

11 A. Roughly, yeah.

12 Q. Okay. All right. I'd like to show you
13 what we'll mark as Exhibit 2, and this is one of
14 the documents that was produced from Moss &
15 Kuhn's file.

16 (Plf. Exhibit No. 2 marked for
17 identification.)

18 Q. All right. Are you familiar with what
19 you're looking at there?

20 A. This is one of the documents I looked
21 at, that was sent to me to look at for today.

22 Q. Okay. And would you agree that that's a
23 ledger that shows the money coming in and out of
24 the firm's trust account with relation to the
25 Satterfield matter?

1 A. Yes.

2 Q. Okay. Mr. Kuhn, a lot of what I want to
3 do with the exhibits today is just authenticate
4 them. So is that a document that's kept in the
5 ordinary course of business?

6 A. Yes.

7 Q. And it's a true and accurate
8 representation of the funds going in and out of
9 that account?

10 A. Yes.

11 Q. Okay. It does show about -- I think
12 this document is from -- this reconciliation is
13 as of 2021. And it shows a balance of \$113,800
14 remaining. Do you know if those funds still
15 remain in escrow?

16 A. They do not.

17 Q. Okay. When -- or where did they go to?

18 A. Ultimately, to the Satterfields, but I
19 think through Eric Bland, their lawyer.

20 Q. Okay.

21 A. I think that's who it was sent to.

22 Q. Okay. Do you recall about when that
23 would have been?

24 A. It would have been after all this rose
25 up and we went through our books and said, hey,

1 we're holding \$113,800 that does not belong to
2 us, who does it belong to. And we figured out
3 who it belonged to and sent -- sent it off to I
4 think it was Eric Bland at the time.

5 Q. Okay. Got it.

6 A. So around late 2021, early 2022.

7 Q. Okay. Do you agree that an escrow agent
8 has a fiduciary duty both to the payer and the
9 payee of funds?

10 A. A fiduciary duty to payer and payee?
11 No, I believe they have a fiduciary duty to who
12 the funds belong to. I don't know, I -- that's
13 not necessarily always the payer and/or the
14 payee.

15 Q. So --

16 A. The fiduciary duty is to generally our
17 client to whom the funds belong.

18 Q. But if a party pays money into escrow
19 and they're being held for some period while
20 rights are being determined for example, would
21 the party holding the money, would the escrow
22 agent owe a duty to the payer to make sure those
23 funds are safeguarded and available to go to the
24 payee when the time comes?

25 MR. HOOD: Object to the form.

1 A. Not necessarily. No, I don't think so.

2 Q. Okay. All right. Let's continue on
3 our -- with some document authentication. I'll
4 hand you what we'll mark as Exhibit 3, please.

5 MR. RANNIK: And, here, we can go
6 ahead and just mark all of these.

7 (Plf. Exhibit No. 3 marked for
8 identification.)

9 (Plf. Exhibit No. 4 marked for
10 identification.)

11 (Plf. Exhibit No. 5 marked for
12 identification.)

13 (Plf. Exhibit No. 6 marked for
14 identification.)

15 (Plf. Exhibit No. 7 marked for
16 identification.)

17 Q. All right. So we've marked, just now,
18 Exhibits 3 through 7. Could I get you to just
19 flip through them, let me know if you recognize
20 them, and if they are true and authentic
21 representations of checks written out of Moss &
22 Kuhn's accounts?

23 MR. HOOD: So, Jaan, the only
24 thing, Exhibit 3 has a deposit ticket for Alec.
25 Obviously, that's not one of their --

1 MR. RANNIK: Correct.

2 MR. HOOD: So he can't authenticate
3 that, but I mean.

4 MR. RANNIK: Correct. No, you're
5 absolutely right.

6 Q. If you'll look down at the actual check
7 however, would you have any reason to believe
8 that's not an accurate and authentic
9 representation of a check written out of the
10 trust account on March 30th, 2017?

11 A. I'm not sure if you asked me if it is or
12 isn't, but, yes, this -- this is a check from
13 our -- our account.

14 Q. Okay. Whose signature is that on the
15 check, do you recognize it?

16 A. Could be Cory's, but I can't swear to
17 it.

18 Q. Okay. No worries.

19 A. I -- that --

20 Q. It looks a little different from --

21 A. It looks a little different from what
22 his usual signature is, but, yeah, if I had to
23 guess.

24 Q. Okay. That was the same conclusion I
25 came to is it doesn't look quite the same. So,

1 hang on, let's go through these one at a time,
2 then. Let's look at number 4. Number 4,
3 authentic, true, and -- a true representation of
4 this particular check?

5 A. Yes.

6 Q. Okay. And is that Cory Fleming's
7 signature?

8 A. Appears to be, yes.

9 Q. Okay. Let's look at number 5. And same
10 questions.

11 A. Yes, and yes.

12 Q. Okay. And number 6, same questions.

13 A. I don't see a signature. It might be
14 there, but, yes, this is a -- it does appear to
15 be a copy of a check from our trust account.

16 Q. Okay.

17 A. A true and accurate copy.

18 Q. And number 7, same thing.

19 A. That -- this is a true and accurate copy
20 of a check from our trust account, yes.

21 Q. Okay. All right. And I'd like to show
22 you what's -- now, I've done a clever thing where
23 I've put two numbers on this one. But, no, this
24 one is number 8. Okay.

25 (Plf. Exhibit No. 8 marked for

1 identification.)

2 Q. All right. Mr. Kuhn, I've just handed
3 you Exhibit 8, which appears to be the dec page
4 for a CNA malpractice policy. Is that correct
5 and do you recognize it?

6 A. Yes, that is correct and I recognize it.

7 Q. Okay. And I believe it provides for
8 \$500,000 in coverage per claim with an aggregate
9 of \$1,000,000?

10 A. Yes.

11 Q. Do you know if this is claims made or
12 occurrence-based coverage?

13 A. I believe it's a claims made.

14 Q. Okay. And can you please remind me the
15 applicable dates of coverage for that policy?

16 A. I believe it's January -- let me find it
17 on here -- yeah, January 4th, 2021, to
18 January 4th, 2022.

19 Q. Okay. Was this the policy then that
20 was -- no, this was not in place when the claim
21 was made; is that correct?

22 A. Are you talking about the claim we're
23 here about today?

24 Q. Yes.

25 A. Correct.

1 Q. Okay. And is CNA providing a defense or
2 contributing to the defense at all in this
3 matter?

4 A. I'm really not clear on that. I -- to
5 my knowledge, they're not, but I could be wrong.

6 Q. Okay.

7 A. If they are, I have not been informed.

8 Q. Okay. All right. So then let's look at
9 what we'll mark as Exhibit 9.

10 (Plf. Exhibit No. 9 marked for
11 identification.)

12 Q. All right. And Exhibit 9, is that
13 another dec page from General Star?

14 A. Yes.

15 Q. And was this the coverage in place when
16 Moss & Kuhn was served with this lawsuit?

17 A. Yes.

18 Q. Okay. Now, it says Moss & Kohn on
19 there, I believe that's just a typo, right?

20 A. I believe so, yep.

21 Q. Okay. And so I understand that Moss &
22 Kuhn has \$100,000 in coverage per occurrence. Is
23 that blanket or does that only apply to claims
24 involving Alex Murdaugh?

25 A. That would be blanket.

1 Q. Okay. And is the lowered limit a result
2 of Mr. Fleming's activities and having to settle
3 other claims?

4 A. Yeah.

5 Q. Okay.

6 A. CNA told us basically go to hell. Yeah.

7 Q. Okay. Do you know if this is eroding
8 limits coverage?

9 A. I believe it is.

10 Q. Okay. Are there any other -- is there
11 any other insurance available to Moss & Kuhn with
12 relation to this claim?

13 A. No.

14 Q. Okay. Has Moss & Kuhn performed any
15 work for Palmetto State Bank?

16 A. Not that I know of, no.

17 Q. Okay. Has it referred any of its client
18 to Palmetto State Bank for loans?

19 A. I never have. And, to my knowledge,
20 nobody else has either.

21 Q. Okay. To your knowledge, has Palmetto
22 State ever referred any work to Moss & Kuhn?

23 A. Not to my knowledge.

24 Q. Okay. Other than in the Satterfield
25 matter with Mr. Fleming, has the firm had any

1 interaction with Chad Westendorf?

2 A. No, never heard of him.

3 Q. How about any of the Laffittes, Russell
4 Laffitte, Charlie Laffitte?

5 A. No.

6 Q. Okay. I think -- and it's possible that
7 Russell Laffitte was a conservator in the
8 Pinckney case, but they kind of run together a
9 little bit. So I suppose there's a change that
10 Cory Fleming and Russell Laffitte had some
11 working together in that regard, but you're not
12 aware of any other instances?

13 A. I'm aware of none.

14 Q. Okay. Other than this lawsuit that
15 Nautilus brought, who else has brought claims
16 against Moss & Kuhn in relation to Alex Murdaugh?

17 A. Oh, the Satterfields. I'm just
18 thinking. It's been such a turmoil. Those are
19 all the civil claims that I can think of.

20 Like I say, state grand jury did a lot
21 of investigating and Office of Disciplinary
22 Counsel did a lot of investigating, but I don't
23 think they took action.

24 As far as civil claims, I think the
25 Satterfields is it.

1 Q. Okay. So no other pending actions
2 besides this one?

3 A. Not that I can recall.

4 Q. Okay. Has Moss & Kuhn ever been sued
5 before other than in connection with Alex
6 Murdaugh? And other than malpractice or
7 frivolous malpractice claims?

8 A. Oh, no.

9 Q. Okay.

10 A. No.

11 Q. Okay. Does Moss & Kuhn --

12 A. Now, we had a -- we had a malpractice
13 claim brought against us because of stuff
14 Kimberly Smith had done --

15 Q. Okay. Okay.

16 A. -- but that's all I can think of right
17 now.

18 Q. All right. And what was the nature of
19 that claim?

20 A. She misrepresented to a client the
21 status of their case --

22 Q. Okay.

23 A. -- I think summarizes it.

24 Q. Okay.

25 A. And I was sued once by an opposing

1 party. They didn't like me, I guess. That's all
2 I can think of right now.

3 Q. Okay. The opposing party, what claim
4 did they bring?

5 A. My client record -- was a personal
6 representative of an estate and they had taken
7 money that didn't belong to them, that belonged
8 to the beneficiaries, and they sued her and me
9 and there was another lawyer involved. Just
10 pretty much everybody.

11 Q. Okay. Got it.

12 A. Yeah.

13 Q. Does Moss & Kuhn use Forge Consulting
14 for its structured settlements?

15 A. Never heard of Forge until this
16 happened.

17 Q. Okay. All right.

18 A. We use Ringler, USAA, another company --
19 I never heard the word Forge until all this came
20 about.

21 Q. Okay. When you use a structure -- when
22 you use a structure for a settlement, how does
23 that work? Who delivers the funds to the
24 structured settlement company?

25 A. Oh, typically most of the ones I have

1 worked with have been for children. And for tax
2 purposes, we always have the -- it has all been
3 personal injury cases. We've had the liability
4 carrier send the premium for the annuity. So not
5 so much talking about structured settlement
6 annuities, directly to the annuity company --

7 Q. Uh-huh.

8 A. -- with -- that's with children. With
9 adults, usually, again for tax purposes, we do it
10 the same way. Although I know there have been
11 instances where they wanted the money so they
12 could shop around themselves.

13 Q. Okay.

14 A. Or they weren't sure, do I really want
15 to structure something out and get guaranteed
16 money down the road or do I want to take all this
17 money myself and invest it. So sometimes with an
18 adult we disburse it just like -- and they --
19 they shop around themselves.

20 Q. Okay.

21 A. Children always -- I can't think of any
22 exception with children it always go the --
23 straight. The adults usually, because they
24 usually want that tax break --

25 Q. Okay.

1 A. -- but sometimes not.

2 Q. Okay. Are there ever instances where
3 the funds get delivered to you as the counsel for
4 the party and then you send it to the structured
5 settlement company?

6 A. I can't think of any time I've ever done
7 that, because if -- if I know -- if my -- me and
8 my client know it's going to go to purchase an
9 annuity, we -- we do it straight out so they get
10 that tax advantage. So it's usually on that
11 situation where the -- where the adult is not
12 sure or they just want to do the shopping
13 themselves, they think they can get a better deal
14 than the insurance company or they just don't
15 trust the insurance company.

16 Q. Sure.

17 A. Yeah. But -- but typically if -- no, I
18 wouldn't get the money and turn right around and
19 get the -- get the annuity.

20 MR. RANNIK: Okay. All right. If
21 we can take a couple minutes, I think I might be
22 done.

23 THE WITNESS: Okay.

24 MR. RANNIK: But let me just call
25 my cocounsel and see if there's anything I've

1 forgotten and then we'll see who else has some
2 questions.

3 (A recess transpired.)

4 Q. Just a few follow-up questions. Does
5 the name Mary Ann Westendorf ring a bell?

6 A. Not at all other than the Westendorf
7 last name --

8 Q. Okay.

9 A. -- but not -- Mary Ann doesn't sound
10 familiar at all.

11 Q. Okay. We saw an email, I think it was
12 from Tanya King where it's about Chad Westendorf
13 being named as the personal representative and I
14 think Tanya King writes is that Mary Ann's
15 husband and we didn't know who Mary Ann
16 Westendorf was or what the relationship was, so
17 that's why I asked the question.

18 A. No, no idea.

19 Q. Okay. You mentioned that with some of
20 Mr. Fleming's files going back a ways you weren't
21 able to locate, you know, copies of the documents
22 in the files. Is that -- I'm guessing probably
23 they were beyond the retention policy?

24 A. Yeah.

25 Q. Okay.

1 A. Yes, sir.

2 Q. Okay. How long is the retention policy?

3 A. Oh, I think it's seven years.

4 Q. Okay.

5 A. Some files we keep longer than that if
6 there's a reason.

7 Q. Okay.

8 A. Wills, stuff where we might have --

9 Q. Okay.

10 A. But generally seven years.

11 Q. Okay.

12 A. Seven to eight to nine years.

13 Q. All right. Okay. The only thing that I
14 believe you saw from the Pinckney file was that
15 check from 2017. Would you expect that there
16 would still be a file there or do you think maybe
17 did Mr. Fleming, you know, remove files?

18 A. I -- I don't know if he removed any
19 files. Not to my knowledge. I think the
20 Pinckney file should still be around.

21 And I didn't actually see the check, I
22 saw the QuickBooks printout that there was a
23 check to Alexander Murdaugh associated with
24 Pinckney.

25 Q. Okay. Okay.

1 A. I think we should still have that
2 Pinckney file though --

3 Q. Okay.

4 A. -- but I'm not positive, but I think we
5 do.

6 Q. All right.

7 A. It'd be a 2017 case. I know that there
8 was a check, so I can look and see.

9 Q. Okay. Well, thank you. Is Tanya King
10 still employed by the firm?

11 A. Yes.

12 Q. Okay. And who does she work with?

13 A. Me, now.

14 Q. Okay.

15 A. I took over. Cory did all the firm's
16 criminal defense work.

17 Q. Okay.

18 A. And I quit doing criminal defense work
19 basically when Cory came to the firm, whenever
20 that was, and sent all my criminal defense work
21 to Cory. When he retired, I inherited all those
22 criminal cases back.

23 Q. Okay.

24 A. And so she's stayed on to help me
25 dispose of all those criminal cases.

1 Q. Okay. I think you mentioned that in the
2 review of the trust account reconciliation the --
3 oh, I forgot -- Lynn Davidson would review the
4 bank records and then give you a printout. Would
5 the printout she'd give you include the bank
6 records? Would you ever review those?

7 A. I'd have -- the bank statement?

8 Q. Yes.

9 A. My main purpose was making sure that our
10 records and the bank records matched.

11 Q. Okay.

12 A. Yes.

13 Q. Okay. Got it. Got it. Got it. Now, I
14 believe Kimberly Smith worked -- you said she
15 came from the solicitor's office -- or, no, you
16 said Alex Murdaugh came from the solicitor's
17 office.

18 A. Yeah. Kimberly did too, though.

19 Q. Okay. Do you know if they were there at
20 the same time?

21 A. No, they weren't. No, she came way
22 after Alec left.

23 Q. Way after. Okay.

24 A. Yeah.

25 Q. Okay.

1 A. I mean, Alec left -- his kids weren't
2 even born yet when he left. I mean.

3 Q. Okay.

4 A. Yeah.

5 Q. Got it. Got it. Can I get you to have
6 a look at Exhibit 2, please, and I want to just
7 ask a couple of questions. So, the very last
8 line of the first page there's an entry for a
9 \$50,000 check to Moss, Kuhn & Fleming. Would
10 that be to Moss, Kuhn & Fleming's operating
11 account?

12 A. I don't know for sure, but I -- I
13 believe so, yes.

14 Q. Okay.

15 A. It looks like the attorney's fees and
16 typically that would go to the operating account.

17 Q. Okay. What -- other than the trust and
18 the operating account, does Moss -- does the firm
19 have any other accounts?

20 A. That's it.

21 Q. Okay. Okay. So if we flip to the
22 second page. The third from last entry there is
23 another payment to Moss, Kuhn & Fleming. Same
24 thing, you would expect that goes to the
25 operating account?

1 A. Yes.

2 Q. Okay. Now, there are some checks here
3 that go to Cory Fleming personally. Does that
4 strike you as odd given what you explained about
5 how profits were shared? Would you expect that
6 all funds would go to the firm and then profits
7 would be disbursed from there rather than
8 Mr. Fleming making payments to himself from the
9 trust account?

10 A. I do not know why those checks were made
11 to him personally.

12 Q. Okay. Does it strike you as unusual?

13 A. Yeah. That's not typically how we --
14 how it would be done. Could be a good reason for
15 it, but I just couldn't say.

16 Q. Sure. Fair enough. I think it's an
17 obvious question, but to state it for the record.
18 Does the firm admit that the various deeds of
19 Cory Fleming for which he lost his license and
20 has been indicted were wrong?

21 A. I don't think I can judge that.

22 Q. Yeah.

23 A. I mean, he pled guilty in federal court,
24 I know that much. I think from that you can
25 conclude that there's something amiss. But I

1 have no personal knowledge that he did anything
2 wrong, so that's a question you'll have to direct
3 to him.

4 Q. Okay. But the -- if the allegations
5 that have been made against him are true and are
6 proven true or he admits them as true, would you
7 agree that they would be -- they would
8 indicate -- they would constitute wrongful
9 conduct?

10 A. There are all kind of allegations made
11 against him, so, I mean, you got to be more
12 specific.

13 Q. Sure. Okay. The allegation of being
14 involved with Alex Murdaugh to steal the money
15 relating to the Satterfield matter, would you --
16 if that was proven or admitted, would you
17 consider that to be wrong?

18 A. If that was true, absolutely.

19 Q. Okay.

20 A. Yeah, stealing's wrong.

21 Q. And I think we'll leave that there.

22 MR. RANNIK: All right. Mr. Kuhn,
23 I think that's all that I've got for you.

24 THE WITNESS: All right.

25 MR. RANNIK: I appreciate your time

1 here today.

2 THE WITNESS: No problem.

3 MR. RANNIK: Anybody else have
4 questions?

5 MR. HOOD: Anybody on Zoom?

6 MS. ALLEN: Yes, I have some
7 questions. I don't know if anybody from the bank
8 does. Whoever wants to go first.

9 MR. PENDARVIS: I have no questions
10 on behalf of Cory Fleming.

11 MR. WALKER: This is Thomas and
12 Trenholm Walker. I have no questions on behalf
13 of the bank.

14 EXAMINATION

15 BY MS. ALLEN:

16 Q. All right. Mr. Kuhn, I'm Christy Allen.
17 I represent Chad Westendorf in this case and I do
18 have a couple questions for you. Do I understand
19 you said at the beginning of this deposition that
20 you have reviewed the -- I guess the Moss, Kuhn &
21 Fleming file on the Satterfield matter and that
22 that's what you had reviewed in preparation for
23 today?

24 A. No. I looked at -- Bobby had emailed me
25 a series of documents and they were Bates-stamped

1 Moss & Kuhn pages 1 through -- I think almost 300
2 pages and that -- that's what I looked at. I
3 have not looked at the --

4 Q. Okay.

5 A. -- Satterfield file.

6 Q. Okay. And just so I can maybe do this a
7 little quicker. So there's a set of documents
8 that were produced in this case with Moss & Kuhn
9 Bates labels at the bottom. There was more than
10 300 pages total, but do you believe that you guys
11 were working from one unitary set?

12 A. Yes.

13 Q. Okay. All right. And do you have any
14 other information than what's in those files
15 about the Satterfield matter more specific to
16 that matter and how it was handled?

17 A. Other than what I've read in the paper,
18 that'd be about it.

19 Q. Okay. So the information that you've
20 got, if -- whatever is in those files is --
21 represents the information that the law firm has
22 as it relates to Satterfield?

23 A. That'd be correct, yes, ma'am.

24 Q. Okay. Let me just go through a few --
25 and I've got a couple of exhibits, but we'll see

1 if we can get through this a little quicker.
2 Sorry, everybody thought they were getting ready
3 to go home super early, but hopefully I won't
4 take too long.

5 Do you -- have you been able to identify
6 any information or any evidence of a written fee
7 agreement between your firm and Chad Westendorf?

8 A. I'm not aware of any, but I have not
9 looked for that. And my role with the physical
10 Satterfield file was making sure it was complied,
11 compiled, preserved, put together, and sent to
12 the appropriate authorities, ODC, state grand
13 jury, that type of thing.

14 Q. So if no written fee agreement has been
15 produced, then you're not aware that there is
16 one?

17 A. I do not recall seeing one, but I have
18 not -- I did not go through the Satterfield file.
19 I did not look through it.

20 Q. Okay. I'm just asking you if -- if it's
21 not in there, you don't have any information that
22 there is one?

23 A. Oh, if it's not in there, then, no, I
24 would have no other information. That's correct.

25 Q. Okay. Is it -- was it your firm's

1 practice to have written fee agreements?

2 A. With clients, yes.

3 Q. Okay. Do you have any information other
4 than what's in the files that you've referenced
5 to about how the amount of attorney's fees were
6 determined and -- with regard to the estate of
7 Satterfield representation?

8 A. No.

9 Q. Do you have any information regarding
10 how it was determined how much Chad Westendorf
11 was going to be paid as the personal
12 representative?

13 A. No.

14 Q. Let me show you what I've got as
15 Exhibit 1 that I sent to the court reporter. I
16 don't know if you can see it or not. Let me try
17 to share my screen. I thought we were totally
18 virtual today, but I guess not. Let's see here.

19 All right. I got a document that's been
20 marked as Exhibit 1, Defendant Exhibit 1.

21 That -- we're going to just -- you can -- I can
22 scan it. I don't know if you have it in front of
23 you other than my shared screen. I'll go through
24 it and I've got just a couple of quick questions.
25 This is an email from Tanya King. I think that

1 was Cory's paralegal, right?

2 (Dft. Exhibit No. 1 marked for
3 identification.)

4 A. She was, yes.

5 Q. And she still works for your firm and
6 works for you?

7 A. Yes.

8 Q. This is an email between Tanya and Cory
9 discussing the appointment of Chad Westendorf as
10 the PR. And he -- they say here, we will have to
11 talk about how to get a different person
12 appointed.

13 Do you have any idea what that's in
14 reference to?

15 A. No.

16 Q. And then we look down here, Cory writes,
17 he, meaning Chad, is the VP of the bank and we
18 want him to be the PR to manage the money.

19 Do you know who we is in that email?

20 A. I do not.

21 Q. Other than what's in the file, do you
22 have any information about how it was Chad
23 Westendorf became the successor personal
24 representative of the estate of Gloria
25 Satterfield?

1 A. I do not.

2 Q. Okay. Let me show you what is marked as
3 Exhibit 2. And I'll represent to you -- and if
4 you want to take a minute to look through this,
5 please do. This is 22 pages from the CHF -- no,
6 this is -- yeah, that's CHF, that's Cory Fleming
7 Bates label. And what -- what -- I'll tell you
8 what they are. Based on the documents that have
9 been produced, these are the only communications,
10 written communications that I've been able to
11 locate in the files between Cory and Chad
12 directly.

13 If you'll want to just take a second and
14 scan through them. I don't know if you can.

15 (Dft. Exhibit No. 2 marked for
16 identification.)

17 MS. ALLEN: Is the court reporter
18 able to put those in front of him on the screen?

19 THE COURT REPORTER: I do not -- I
20 just have the Zoom link. I can maybe pull them
21 up on my computer and then show him. Hold on,
22 just give me a second.

23 MR. HOOD: Christy, are they Bates
24 stamped?

25 MS. ALLEN: Yeah. I just wanted to

1 give him a second to scan through them.

2 MR. HOOD: Right.

3 MS. ALLEN: I don't --

4 MR. HOOD: I mean are they Bates
5 stamped? If they're Bates stamped, I can pull
6 them up on my computer. That's why I'm asking.

7 MS. ALLEN: It might -- it may not
8 all be -- oh, yeah. Let me -- can I just take a
9 minute break.

10 And then, Bobby, how about I just
11 email you the whole -- just the whole set.

12 MR. HOOD: That's fine.

13 MS. ALLEN: Can we take a minute
14 break and let's do it that way so this will go a
15 little quicker? Thank you.

16 We'll go off the record.

17 (A recess transpired.)

18 Q. Okay. Mr. Kuhn, like I said, there is
19 22 pages of this exhibit and they are what I
20 believe to be all the communications between Chad
21 Westendorf and Cory Fleming that were produced as
22 part of either Cory Fleming's or Moss, Kuhn &
23 Fleming's files or Chad Westendorf's files for
24 that matter.

25 So the first exchange looks like a

1 request from Chad Westendorf to Cory in January
2 of 2019 requesting copies of a document that was
3 signed with the judge. I think it would have
4 been the first settlement approval hearing. Next
5 one is a letter dated March 14th from Cory to
6 Chad advising him that there was going to be a
7 mediation on March 22nd in the Satterfield
8 matter.

9 The next exchange is March 19th prior to
10 the mediation. There is an exchange between Chad
11 and Cory about Chad not being able to attend the
12 mediation in person because he has staff out.
13 And there's a couple emails about how to reach
14 him by phone.

15 Then the next one is April 25th, 2015,
16 so after the mediation. It looks like Cory
17 emails and says, will you be in the office. I
18 need to send my investigator to get the check
19 endorsed. The time of that would be the second
20 settlement check paid by Nautilus. And he
21 responds, yes, but I'll be out tomorrow.

22 Do you know who Cory's investigator was?

23 A. Yes. Mostly likely it would have been
24 Barton J. Adams.

25 Q. Okay. Is that BJ, is that how he's

1 referred to?

2 A. BJ, yes. He goes by BJ.

3 Q. And what was his relationship to the
4 firm?

5 A. He was an investigator, office manager,
6 jack-of-all-trades.

7 Q. So he was an employee?

8 A. Yes, he was an employee.

9 Q. And is he still employed?

10 A. No. No, he retired.

11 Q. All right. Next exchange,
12 September 15th of 2021, so that would have been
13 after a lot of disclosures were made with regard
14 to Alec Murdaugh and the Satterfield money.
15 There's reference that Cory wrote to Chad saying
16 his paralegal is gathering documents that Chad
17 had requested and will send them over.

18 And there's the next letter that looks
19 like the documents that Chad asked -- I think it
20 was a phone call that happened just prior to that
21 and Cory provided to Chad a September '21, looks
22 like the order approving Satterfield's settlement
23 and that's the whole thing of 4.3 million. A
24 copy of the February -- I mean a copy of the
25 release agreement from the earlier settlement. I

1 think that would have been two years prior, a
2 petition, more approval of that settlement that
3 had been signed in May of 2019.

4 Next correspondence is around that same
5 date, September 17th of '21, where Cory emailed
6 Chad and we can read it, but they spoke and then
7 Cory disclosed to Chad that he had learned that
8 Alec Murdaugh had been stealing money and that
9 the Satterfield money was involved, and told him
10 he couldn't represent him, and they had a
11 conflict of interest and I guess that was the end
12 of the relationship.

13 Did you ever have any discussions with
14 Cory about this conflict of interest letter?

15 A. No.

16 Q. Do you understand -- do you know what he
17 meant by he had a conflict of interest at this
18 time?

19 A. All I know is what I'm reading in the
20 letter. No.

21 Q. Okay. All right. And then it looks
22 like that's the same letter.

23 So I'm assuming that that's all the
24 communications that were in your file between
25 Cory and Chad. I've got a couple questions

1 related to that. Do you know of any other
2 communications other than these?

3 A. I do not know of any. Bear in mind, I
4 have not studied that file, but --

5 Q. Okay.

6 A. -- I don't know of any others.

7 Q. Okay. And just skimming through these,
8 you agree that there's nothing about terms of any
9 representation agreement?

10 A. That's what it appears, yes.

11 Q. There's nothing about how attorney fees
12 are going to be charged?

13 A. I did not see that.

14 Q. Nothing about whatever Chad Westendorf
15 would be paid, a fee or how much?

16 A. No, I didn't see that in there.

17 Q. There was no indication in these
18 communications that Cory explained any of the
19 responsibilities of being a personal
20 representative to Chad Westendorf, is there?

21 A. That's correct.

22 Q. Do you have any information that anybody
23 at the law firm explained any responsibilities of
24 being a PR to Chad Westendorf?

25 A. No.

1 Q. Okay. Do you have any indication that
2 anybody at the firm provided copies of any of
3 Gloria Satterfield's medical records to Chad
4 Westendorf?

5 A. No. I was not involved with this file
6 at all.

7 Q. Okay. No indication that the firm
8 provided Chad information about the -- like, I
9 think, Trident Hospital made a claim for \$600,000
10 in costs. Any information that Chad was provided
11 any information about that claim?

12 A. No. Bear in mind, when I say I don't
13 that doesn't mean that Cory didn't do that, just
14 I wouldn't have --

15 Q. I understand.

16 A. -- been there. If it happened --

17 Q. You're --

18 A. -- I would not have been there. So, to
19 my knowledge, no --

20 Q. You're --

21 A. -- I don't have any information.

22 Q. -- here for the firm --

23 MR. HOOD: Yeah. Christy, these
24 aren't topics --

25 Q. I'm just --

1 MR. HOOD: These aren't topic that
2 were noticed and, I mean, so you're asking him
3 his personal knowledge as opposed to the firm
4 and --

5 MS. ALLEN: Oh, I don't mean his
6 personal -- I'm not asking his personal
7 knowledge, I'm asking him you as the law firm.
8 And I do think they're covered by the topics.

9 MR. HOOD: Well, I mean, the
10 problem is is that the firm can only answer what
11 they know absent talking to Cory because he's
12 taking the Fifth and we're unable to speak with
13 him. So --

14 MS. ALLEN: I understand.

15 MR. HOOD: Okay.

16 MS. ALLEN: I understand that.

17 Q. And when I say you, I mean the firm.

18 A. Okay. Well, since Cory was partner --
19 if that was done, it would have been done by
20 Cory.

21 Q. I understand.

22 A. And since I wasn't there --

23 Q. So I'm asking if you as the firm have
24 any information other than what we've seen here.
25 And my understanding, the answer is no?

1 A. The answer's no. But just to keep it
2 clear, if the firm did it, it would have been
3 done by Cory. So he's the only one --

4 Q. Right. But he --

5 A. -- who can answer that question. Since
6 to my knowledge --

7 Q. Right. But he's not here --

8 A. -- neither I --

9 Q. -- he's not designated as a 30(b)(6)
10 person to testify.

11 A. That's correct.

12 Q. Okay. I don't think we are
13 misunderstanding each other. I understand you've
14 got the firm -- the file and that -- and I'm just
15 trying to confirm that's the entire amount of
16 information the person who is here representing
17 the law firm has as far as answering these
18 questions.

19 A. That is correct. Know absolutely
20 nothing about it --

21 Q. Okay.

22 A. -- other than what's in the file.

23 Q. All right. Understanding Exhibit 2 is
24 the communications -- I represented that are the
25 only communications that I see in the file

1 between Cory and Chad, you agree that there's no
2 indication that Cory provided Chad any, like,
3 draft pleadings, there's no communications about
4 what was going on, no indication that he sought
5 Chad's approval in advance of any hearing
6 petition that was signed, right?

7 A. That is not reflected in Exhibit 2,
8 that's correct.

9 Q. Okay. Does -- do you know, and I say
10 you, the firm know if any person at the law firm
11 even drafted the pleadings, the petitions as it
12 relates to the Gloria Satterfield settlement?

13 A. I -- the only one who could answer that
14 would be Cory. I have no idea who drafted the
15 pleadings.

16 Q. Okay. Any indication in Exhibit 2 that
17 Cory and Chad communicated prior to the Gloria
18 Satterfield mediation --

19 MR. HOOD: You broke --

20 Q. -- about the mediation itself.

21 A. One second --

22 MR. HOOD: You broke up a little
23 bit.

24 A. Can you repeat that?

25 Q. Yeah. Let me rephrase that. In

1 Exhibit 2 there was some email about whether or
2 not Chad could be present at the mediation due to
3 some kind of conflict. And then there was a
4 letter from Cory to Chad saying the mediation is
5 on March 22nd. Those are the only two
6 communications in Exhibit 2.

7 My question to you is do you have any --
8 you meaning the firm have any other information
9 that Cory communicated with Chad about the
10 mediation itself prior to it taking place?

11 A. No.

12 Q. Did anybody at the firm enter any time
13 to be charged in the Gloria Satterfield case?

14 A. Not -- not that I know of.

15 Q. Any indication that -- let's see. Let's
16 look at -- let me strike that.

17 Let's look at Exhibit 3, which I've got
18 up on the screen. And I'll scroll down. Let's
19 see. Okay. So Exhibit 3 is an email from Tanya
20 King to -- going from Tanya to J. Johnsen, who is
21 that -- oh, I'm sorry, that's at Gallivan White &
22 Boyd, I apologize. They're copying Cory. So it
23 looks like they're sending the law firm's W-9.
24 And there's an indication here to make Chad as
25 personal representative and Moss, Kuhn & Fleming

1 as the payee on the check. And then if we look
2 down at the second page, this looks like the W-9
3 for the firm.

4 Do you recognize that to be the number,
5 your --

6 A. It is.

7 Q. -- tax ID number?

8 (Dft. Exhibit No. 3 marked for
9 identification.)

10 A. It is.

11 Q. And then let's look at what's been
12 marked as Exhibit 4 and this is more emails.
13 This is April 2019 discussing the -- who goes on
14 the check. And here it's Cory telling John
15 Grantland, Chad and Moss, Kuhn & Fleming is who's
16 on the check and he said Chad does not need a
17 W-9, he is not receiving the funds.

18 If you look down here, Cory tells John
19 he meant to add Moss, Kuhn & Fleming on the
20 check.

21 And then Cory is emailing John and
22 says -- I guess the question was how do you want
23 the check made out and he says I want it made out
24 to Chad and then there's an ID number.

25 But if we look back at the W-9 for your

1 firm, I believe that's the same number as your
2 firm.

3 (Dft. Exhibit No. 4 marked for
4 identification.)

5 A. Yes, it is.

6 Q. Do you see that? So that's not Chad's.

7 And then just to kind of familiarize you
8 with this email. After that, that's when Cory
9 responds and says, no, we need to add Moss,
10 Kuhn & Fleming, you see that.

11 Do you have any -- I mean, would you
12 agree that Cory acting on behalf of your firm
13 affirmatively had Moss, Kuhn & Fleming added to
14 that check?

15 A. Yes.

16 Q. And do you have any information that
17 Chad Westendorf was involved in that decision in
18 any way?

19 A. I don't know one way or the other, so
20 no.

21 Q. Okay.

22 MR. PENDARVIS: I just got kicked
23 out of Zoom. I don't know whether the rest did.
24 I'm back in.

25 Q. There was reference to Forge Consulting

1 in this file. I think I heard you say earlier
2 you had not heard of Forge until this came up; is
3 that right?

4 A. That is correct.

5 Q. Okay. And so you, meaning the firm,
6 other than what's in the files that have been
7 produced, you don't have any information that
8 Cory obtained any documentation from Forge
9 Consulting as it relates to a structured
10 settlement --

11 A. That's correct.

12 Q. -- right?

13 A. Yes.

14 Q. Okay. If we look at what's been marked
15 as Exhibit 5. Do you see that? I think it's an
16 October 6th, 2020, email?

17 (Dft. Exhibit No. 5 marked for
18 identification.)

19 A. Yes.

20 Q. This is an email from October 6th of
21 2020 between Tanya and Cory and it talks about
22 the prior check for 2.9 million that was sent to
23 Forge and there being 231,000 left in the trust
24 account. And, then, the bottom email it looks
25 like Cory communicates that we are now able to

1 send money to Forge -- additional money to Forge
2 in this case.

3 Any indication that Cory or anybody at
4 your firm communicated with Chad Westendorf in
5 any way about monies going to Forge either the
6 first check or even the second one in 2020?

7 A. All I would -- I don't -- all I would
8 know would be what was in the file. And I don't
9 know what all --

10 Q. Okay.

11 A. -- is in the file, so no.

12 Q. Okay. Well, Exhibit 2 I've referenced
13 all the communication in the file between the two
14 of them and there wasn't anything with regard to
15 Forge in it, right?

16 A. I cannot recall if there was a reference
17 to Forge in that or not.

18 Q. Okay. You don't have -- do you have any
19 information that Cory or anybody at the firm
20 communicated to Chad in October of 2020 that
21 there was still money left in the estate law firm
22 trust account?

23 A. Not that I'm aware of.

24 Q. Okay. Any indication that Cory or
25 anybody at the firm communicated with Chad about

1 the stipulation of dismissal that was ultimately
2 signed by Cory and Alec in October of 2020?

3 A. Yes, there's an indication. There could
4 be something in the file since I'm not familiar
5 with the file. But to my knowledge, there is
6 not.

7 Q. Okay.

8 A. I have not seen anything that would --

9 Q. Other than --

10 A. -- show that. Yeah.

11 Q. Other than what may be in the documents
12 that have been produced, you as the law firm
13 don't have any additional information about that?

14 A. That is correct.

15 Q. Okay. Do you have any information that
16 Chad Westendorf had any knowledge whatsoever of
17 any scheme to misappropriate any of the Gloria
18 Satterfield settlement funds?

19 A. No.

20 Q. Do you have any information to support
21 the allegation that Cory made any agreement with
22 Chad to misappropriate any funds from the
23 Satterfield settlement fund?

24 A. No.

25 Q. Assuming Cory misappropriated funds from

1 the Satterfield settlement monies, do you have
2 any information that Chad Westendorf participated
3 in that misappropriation in any way?

4 A. No.

5 Q. Do you have any information to indicate
6 that Cory Fleming ever disclosed to Chad
7 Westendorf that he had misappropriated monies
8 from the Satterfield settlement account?

9 A. No.

10 Q. Give me one second, let me see what else
11 I've got and I might be almost done.

12 Okay. I've just got a few more. Let me
13 show you what's been marked as Exhibit Number 7.

14 (Dft. Exhibit No. 6 not identified
15 for the record.)

16 (Dft. Exhibit No. 7 marked for
17 identification.)

18 Q. Okay. Mr. Kuhn, this is an October 7th,
19 2021, letter from Tommy Lydon who originally was
20 representing Mr. Westendorf to Thomas Pendarvis
21 and David Overstreet who I understand were your
22 firm lawyers at the time. Take a second to look
23 at it and I just have a couple questions.

24 First of all, do you recall receiving
25 this letter?

1 A. I don't recall it right now, but I've
2 only read the first sentence.

3 Q. Okay. Just take a second.

4 A. Okay. You can scroll down farther.

5 Q. Okay.

6 A. Okay. You can scroll a little bit
7 farther to the last paragraph.

8 Okay.

9 Q. Okay. You agree this is a notice of a
10 claim by Chad Westendorf against your firm?

11 A. Say that again? I'm sorry.

12 Q. You agree this is a notice of a
13 potential claim by Chad Westendorf against your
14 law firm?

15 A. I -- I guess -- I'm reading it for the
16 first time that I know of so, I -- I -- I don't
17 know.

18 Q. Okay. Do you know if you turned this
19 over to your insurance company?

20 A. No.

21 Q. Do you know if you received any
22 reservation of rights or denial letter or
23 response from your insurance company for this
24 letter?

25 A. I do not recall that if we did.

1 Q. If you had, is that something that you
2 could provide to your lawyers so they could
3 produce it?

4 A. Yeah, I could look and see.

5 (This page contains Requested
6 Information to be supplied by counsel and/or the
7 deponent.)

8 MS. ALLEN: Okay. That's all the
9 questions I have. Thank you.

10 THE WITNESS: Okay. Thank you.

11 MR. RANNIK: Bobby and Fred, would
12 you permit about a minute of follow-up
13 questioning from me?

14 MR. HOOD: Of course.

15 MR. RANNIK: And I -- I'm jumping
16 in here. I assume nobody has -- I think we've
17 heard from everybody else that no one else has
18 questions, but I don't want to jump in line if
19 anybody does.

20 MR. PENDARVIS: No questions for
21 Mr. Fleming.

22 MR. WALKER: No questions on behalf
23 of Palmetto State Bank at this time.

24 MR. RANNIK: Okay. Well, thanks.

25 EXAMINATION

1 BY MR. RANNIK:

2 Q. I asked you about Mr. Fleming's conduct
3 and the extent to which it would be wrongful.

4 Let me put a little more meat on that bone.

5 Would it be wrong to disburse settlement funds in
6 a wrongful death action in which there's an
7 estate without first having a filed or approving
8 the settlement?

9 A. To disburse the funds before the order
10 approving settlement is signed?

11 Q. Is filed.

12 A. Is filed? Usually we don't get the
13 funds until that's done, so I've never had that
14 come up.

15 Q. And if it did, would you agree --

16 A. You say wrong. I certainly wouldn't do
17 it.

18 Q. Yeah.

19 A. Yeah.

20 Q. Yeah. Would it be wrong to disburse
21 settlement funds in a manner inconsistent with an
22 order approving the settlement?

23 A. It'd depend on the inconsistency.

24 Q. How about in the amount of fees being
25 taken from the funds, for example?

1 A. You wouldn't take more fee than what's
2 approved. You could, I guess, waive some of your
3 fees if you wanted to, but you certainly wouldn't
4 take more than the -- than what's approved.

5 Q. Okay. Would it be wrong to misrepresent
6 to the Court the amount of expenses incurred in a
7 case as parts of a petition to approve a
8 settlement?

9 A. Yes.

10 Q. Would it be wrong to disburse settlement
11 funds in a manner inconsistent with the payor's
12 instructions about how and when to disburse them?

13 A. Not necessarily.

14 Q. If an instruction was given not to
15 release funds until an order approving a
16 settlement has been signed and filed and the
17 funds were disbursed before any order was filed,
18 would that be wrong?

19 MR. HOOD: Object to the form.

20 A. It would depend. Often when the carrier
21 sends me a settlement check, the cover letter
22 will say something like hold these funds in trust
23 until your client has signed the release or hold
24 these funds in trust until an order approving
25 settlement's been issued. In such a case, yes,

1 it would be wrong.

2 Q. Okay. Would it be wrong to arrange to
3 prevent an order approving the settlement being
4 filed?

5 A. Unless there was good reason for that.

6 Q. Would bad publicity for the defendant be
7 a good reason for that?

8 A. I don't know. I don't have any opinion
9 on that.

10 Q. And would it be wrong to dismiss an
11 action without one's client's consent?

12 A. Yeah. I mean, they hire you to bring
13 the action so if you dismiss it and they don't
14 know about it, yes, that would be wrong.

15 MR. RANNIK: Okay. Thank you so
16 much, Mr. Kuhn. That's all I've got.

17 MR. HOOD: Anything else on Zoom?

18 MR. WALKER: Nothing from Palmetto
19 State Bank. Thank you.

20 MS. ALLEN: Nothing from Chad
21 Westendorf.

22 MR. HOOD: All right. Y'all have a
23 good weekend.

24 THE WITNESS: Y'all take care.

25 MR. WALKER: Thank you. You too.

1 MS. ALLEN: Thanks. You too.

2 THE COURT REPORTER: Anyone on the
3 Zoom, would anybody like to order a copy of the
4 transcript before y'all log off?

5 MR. WALKER: Kelly, this is
6 Trenholm for Palmetto State Bank. We would like
7 a copy.

8 THE COURT REPORTER: Okay.

9 MR. WALKER: We only need one copy.
10 Tom was on for part of this too, but we would
11 like one copy. An electronic is fine.

12 THE COURT REPORTER: Okay. Would
13 you like the exhibits attached?

14 MR. WALKER: Yes, please.

15 THE COURT REPORTER: Great. Thank
16 you.

17 Ms. Allen, would you like a copy?

18 MS. ALLEN: No. Thank you.

19 THE COURT REPORTER: Okay.

20 Thank you. Y'all have a great
21 weekend.

22 MR. HOOD: He'll read and sign.

23 THE COURT REPORTER: Okay. And do
24 you want me to send that to you, Mr. Hood, or
25 directly to Mr. Kuhn?

1 MR. HOOD: You can send it to me.

2 THE COURT REPORTER: Okay. Thank
3 you. And, Mr. Hood, would you like a copy of
4 this?

5 MR. HOOD: Sure.

6 THE COURT REPORTER: Okay. Do you
7 take paper copy, electronic or both?

8 MR. HOOD: E-tran, please.

9 THE COURT REPORTER: E-tran. With
10 exhibits?

11 MR. HOOD: Sure.

12 THE COURT REPORTER: Alrighty.
13 Mr. Pendarvis, would you like a
14 copy?

15 MR. PENDARVIS: That's okay.

16 THE COURT REPORTER: Okay. Thank
17 you.

18 And I believe we have your standard
19 order.

20 MR. RANNIK: Yes, indeed.

21 THE COURT REPORTER: Would you like
22 the exhibits attached?

23 MR. RANNIK: No, thanks. That's
24 okay.

25 THE COURT REPORTER: Okay. Thank

1 you.

2 (The witness, after having been
3 advised of his right to read and sign this
4 transcript, does not waive that right.)

5 (The deposition concluded at
6 11:35 A.M.)

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CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, KELLY B. BAEKELANDT, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on July 25, 2023, at Bluffton, Beaufort County, South Carolina.

KELLY B. BAEKELANDT
REGISTERED PROFESSIONAL REPORTER
RPR, CSR (Georgia)
My Commission expires
June 16, 2026

1 DEPONENT CORRECTION SHEET

2 I, the undersigned, H. FRED KUHN, JR., do
3 hereby certify that I have read the foregoing
4 deposition and wish to make the following
5 clarifications and/or corrections, if any.

6 PAGE LINE CHANGE REASON
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20 H. FRED KUHN, JR. Date

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 wanted (6)
 wants (1)
 way (10)
 ways (1)
 weekend (2)
 Well (14)
 went (3)
 we're (6)
 WESTENDORF
 (27)
 WESTENDORF_000
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 013-14 (1)
 WESTENDORF_000
 015 (1)
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 016-21 (1)
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 023-26 (1)
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 031-33 (1)
 WESTENDORF_000

036-38 (1)
 Westendorfs (1)
 we've (5)
 whatsoever (1)
 where'd (2)
 White (1)
 WILLS (2)
 wish (1)
 within-entitled (1)
 WITNESS (13)
 word (2)
 work (15)
 worked (14)
 working (4)
 works (3)
 worries (1)
 writes (2)
 written (11)
 wrong (15)
 wrongful (3)
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 WWW.CLARKBOL
 EN.COM (1)

 < Y >
 Y'all (4)
 Yeah (36)
 year (1)
 years (12)
 Yep (2)
 younger (3)

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 Zoom (5)